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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,776	04/08/2002	Etienne Cousin	BDL-379XX	9662

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EXAMINER
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GLESSNER, BRIAN E

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 05/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/070,776

Applicant(s)

COUSIN, ETIENNE

Examiner

Brian E. Glessner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20, 22-31, 33-43 and 46-48 is/are rejected.
- 7) ☒ Claim(s) 21-28, 32, 44 and 45 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### DETAILED ACTION

The following office action is in response to the amendment filed on December 31, 2003.

Claims 1-48 are pending in the application. Claims 1-20, 22-31, 33-43 and 46-48 are rejected.

Claims 21-28, 32, 44 and 45 are objected to for being dependent upon a rejected base claim.

1. The amendment filed 12/31/03 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The applicant amended claims 5, 13, 20, 42 and 43 to claim the single lip of the joint being perpendicular to the support walls. This was not shown or disclosed in the drawings or specification as originally presented. Therefore, it constitutes new matter. The claims will be examined as originally claimed, i.e. "approximately perpendicular". The only embodiments that show the lip being perpendicular to the support walls are the embodiments that have two lips. All of the single lip embodiments are at an angle to the support walls, not perpendicular.

Applicant is required to cancel the new matter in the reply to this Office Action.

### *Claim Rejections - 35 USC § 103*

1. Claims 1-20, 29-31, 33-38, 40-43, 46 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicot et al. (FR 2,619,531 A1) in view of Gagliardi (EP 0 652 339 A1).

In regard to claim 1, Nicot discloses a rail section for stretched fabric partitions, said section comprising at least one groove 3 (examiner's attachment) defined by two lateral walls 1, 2 (examiner's attachment) and a base wall 4, said groove being designed to contain at least one edge of the stretched fabric after it has been mounted in the section, said rail section being of a

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single piece, said rail section comprises a joint 5, characterized in that said joint keeps the edge of the stretched fabric pinched in said groove between the joint and an internal face of one of said lateral walls. Nicot does not specifically disclose that said joint is made of a different material having a property of flexibility differing from that of the material constituting the walls of said groove. Gagliardi teaches that it is known to provide a rail section that is comprised of a semi-rigid plastic material and a lip 2, i.e. a joint, that is comprised of a deformable, flexible material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct Nicot's joint out of a flexible, deformable material, because the flexible, deformable material will allow easy insertion of the fabric into the groove, but will more closely conform to the sidewall to hold the fabric in place after the fabric has been inserted into said groove. Further, the flexible, deformable material will also have a higher coefficient of friction to better grip the fabric.

In regard to claim 2, Nicot in view of Gagliardi disclose the basic claimed invention, wherein the cross-section of said groove is generally U-shaped. The extreme portions of the lateral walls of the groove opposite the base wall of the groove defining an opening at least partially sealed off by the joint retaining the edge of the stretched fabric.

In regard to claim 3, Nicot in view of Gagliardi disclose the basic claimed invention, wherein the joint comprises a single lip protruding from one of the lateral walls 2 of said groove, known as a joint support wall, said lip comprising an internal face opposite the base wall of the groove and an opposing external face.

In regard to claim 4, Nicot in view of Gagliardi disclose the basic claimed invention except for specifically disclosing that said joint is approximately flat with the internal face of the

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lip being approximately parallel to the external face. It would have been an obvious matter of design choice to one having ordinary skill in the art at the time the invention was made to make the joint flat instead of tapered, since applicant has not disclosed that said flat joint solves any stated problems or is used for any particular purpose and it appears that the joint will work equally well if it were tapered or flat. The applicant has not specifically stated that the flat joint will allow the apparatus to function in a more efficient manner. Therefore, the examiner takes the position that said flat joint lacks criticality to the claimed invention.

In regard to claim 5, Nicot in view of Gagliardi disclose the basic claimed invention, wherein the single lip of the joint extends "approximately" perpendicular to the support wall.

In regard to claims 6, 7, 40 and 41, Nicot in view of Gagliardi disclose the basic claimed invention, wherein the single lip of the joint extends along an angle of less than 65 degrees with respect to its support wall, and a free edge of the lip is placed inside the groove in support against the lateral wall of the groove placed opposite the joint support wall, figures 1-4. The lip also projects from the extreme portion of its support wall.

In regard to claims 8-11, Nicot in view of Gagliardi disclose the basic claimed invention, wherein the single lip of the joint extends along an angle of less than 65 degrees with respect to its support wall, and a free edge of the lip is placed inside the groove in support against the lateral wall of the groove placed opposite the joint support wall, figures 1-4. The lip also projects from the extreme portion of its support wall.

In regard to claim 12, Nicot in view of Gagliardi disclose the basic claimed invention, wherein the lip of the joint comprises an internal face oriented towards the base wall of the

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groove and an external opposing face, the internal face and the external face of the joint are not parallel to each other.

In regard to claim 13, Nicot in view of Gagliardi disclose the basic claimed invention, wherein the internal face of the single lip of the joint extends approximately perpendicular to its support wall.

In regard to claims 14-19, Nicot in view of Gagliardi disclose the basic claimed invention, wherein the single lip of the joint extends along an angle of less than 65 degrees with respect to its support wall, and a free edge of the lip is placed inside the groove in support against the lateral wall of the groove placed opposite the joint support wall, figures 1-4. The lip also projects from the extreme portion of its support wall.

In regard to claim 20, Nicot in view of Gagliardi disclose the basic claimed invention, wherein the external face of the single lip of the joint extends "approximately" perpendicular to the lateral walls of the groove.

In regard to claim 29, Nicot in view of Gagliardi disclose the basic claimed invention, wherein the lateral walls of the groove are made of an approximately rigid material selected from the group comprising metal alloys and rigid polymers, the joint being made of a substantially flexible material, such as a flexible polymer, abstract and Gagliardi's disclosure.

In regard to claim 30, Nicot in view of Gagliardi disclose the basic claimed invention, wherein a first material is used for the substantially rigid walls of the groove, and a second material is used for the joint. The examiner would like to point out that the co-extrusion limitation is a product-by-process limitation. Therefore, even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product

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itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. Thus, since the final products are the same, the claimed limitations are met.

In regard to claim 31, Nicot in view of Gagliardi disclose the basic claimed invention, wherein the walls of the groove are made of rigid PVC and the joint being made of flexible PVC, abstract. The examiner would like to point out that the joint is somewhat flexible because Gagliardi discloses that his material 2 is flexible and deformable.

In regard to claim 33, Nicot in view of Gagliardi disclose a false wall, not shown (abstract), comprising a fabric fixed along edges of the wall to a support fixed to the walls of a room, said support comprising a rail formed of portions of sections as shown in claim 1, characterized in that the edge of the fabric is provided with an excess thickness 8 (examiner's attachment) taking support against the internal face of the joint.

In regard to claim 34, Nicot in view of Gagliardi disclose the basic claimed invention, wherein the false wall is used as a false ceiling (abstract and figures 3 and 4), the groove for the rail facing downwards, the lateral walls being approximately vertical with a first wall close to the wall and a second wall being towards the inside of the room, the joint projecting from a lower extreme portion of the first lateral wall, the excess thickness portion being against both the internal face of the second wall and the internal face of the joint, the fabric is also stretched horizontally and deviated upwards so as to penetrate into the groove.

In regard to claim 35, Nicot in view of Gagliardi discloses the claimed invention, wherein the two lateral walls of the groove have "approximately" identical heights, the external face of

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the joint being placed perpendicular to said lateral walls, and thus in the continuity of the stretched fabric. Gagliardi teaches that the lip can be placed perpendicular to the support wall.

In regard to claim 36, Nicot in view of Gagliardi disclose the basic claimed invention, wherein the two lateral walls have different heights, the first lateral wall 2 of the groove close to the wall being of smaller height than the second wall 1, the external face of the joint being slanted at an angle so as to form a continuity between the extension plane of the stretched fabric and the lower extremity of the first lateral wall.

In regard to claim 37, Nicot in view of Gagliardi disclose the basic claimed invention except for specifically disclosing that the joint is made of a material exhibiting a color, tint or brightness identical to or coordinated with those of the stretched fabric. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the joint of the same color, tint and brightness as the fabric, because, by doing so, the joint will blend in with the fabric. Therefore, it will be less noticeable and will not stick out. Thus, the aesthetics of the room will be maintained. Further, one of ordinary skill would also not be concerned with the color, tint and brightness of the remainder of the device because it will be hidden from view when the fabric is put into place.

In regard to claim 38, Nicot in view of Gagliardi disclose the basic claimed invention except for specifically disclosing that the lower extremity of the second wall is rounded. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the end of the wall rounded, because by doing so the stretched fabric will not be as likely to tear or be punctured by the end of the wall. If the wall were pointed, it may tear the



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fabric. However, if the wall is rounded, the fabric will smoothly transition over the end and change direction into the groove.

In regard to claim 42, Nicot in view of Gagliardi disclose the basic claimed invention, wherein the lip of the joint comprises an internal face oriented towards the base wall of the groove and an external opposing face, the internal face and the external face of the joint not being parallel to each other, the internal face of the single lip of the joint extends "approximately" perpendicular to its support wall, a free edge of the lip is placed inside the groove, and the free edge of the lip is approximately in support against the lateral wall of the groove placed opposite the support wall of the joint.

In regard to claim 43, Nicot in view of Gagliardi disclose the basic claimed invention, wherein the single lip of the joint extends along an angle of less than 65 degrees with respect to its support wall, and a free edge of the lip is placed inside the groove in support against the lateral wall of the groove placed opposite the joint support wall, figures 1-4. The lip also projects from the extreme portion of its support wall, and the single lip of the joint extends "approximately" perpendicular to the lateral walls of the groove.

In regard to claims 46 and 47, Nicot in view of Gagliardi disclose the basic claimed invention. Claims 46 and 47 contain the same limitations as claims 34-38. Therefore, claims 46 and 47 are rejected on the same grounds of rejection set forth above with respect to claims 34-38.

1. Claims 39 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicot et al. (FR 2 619 531 A1) in view of Gagliardi (EP 0 652 339 A1) and further in view of Scherrer (FR 2 630 476 A1).

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In regard to claims 39 and 48, Nicot in view of Gagliardi disclose the basic claimed invention except for specifically disclosing two coplanar horizontally stretched fabrics, wherein the fabrics are held by a rail section having an upper horizontal core prolonged downwards by a vertical central wing and two other lower horizontal wings situated on both sides of the vertical central wing, such that the horizontal wings constitute the lateral walls of two opposing grooves and a joint for retaining the excess thickness of the edges of the two stretched fabrics. Scherrer teaches that a structure having a horizontal core, a vertical central section with two horizontal sections on each side of the vertical section to hold two coplanar fabrics is known (figures 5 or 6). It would have been obvious to incorporate this teaching into Nicot's invention, because by using a similar structure with Nicot's joint, the wall or ceiling could be covered with multiple pieces of fabric instead of a single piece extending the entire length of the wall or ceiling. This would produce a more pleasing aesthetic appearance to the room.

***Allowable Subject Matter***

2. Claims 21-28, 32, 44 and 45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. This holding of allowable subject matter is provisional and subject to reconsideration upon receipt of the amended claims to comply with the specifications set forth in 35 U.S.C. 112, second paragraph.

***Response to Arguments***

3. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

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*Conclusion*

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Glessner whose telephone number is 703-305-0031. The examiner can normally be reached on Monday-Friday 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on 703-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

B.G.  
April 29, 2004

A handwritten signature in cursive script, appearing to read "Brian Glessner", with a long horizontal flourish extending to the right.

**BRIAN E. GLESSNER**  
**PRIMARY EXAMINER**